Google Inc. et al v. Egger et al Doc. 262

PILLSBURY WINTHROP SHAW PITTMAN LLP
BRUCE A. ERICSON #76342
DAVID L. ANDERSON #149604
JACOB R. SORENSEN #209134
MARC H. AXELBAUM #209855
DANIEL J. RICHERT #232208
50 Fremont Street
Post Office Box 7880
San Francisco, CA 94120-7880
Telephone: (415) 983-1000
Facsimile: (415) 983-1200

SIDLEY AUSTIN LLP
DAVID W. CARPENTER (admitted *pro hac vice*)
DAVID LEE LAWSON (admitted *pro hac vice*)
BRADFORD A. BERENSON (admitted *pro hac vice*)
EDWARD R. MCNICHOLAS (admitted *pro hac vice*)
ERIC A. SHUMSKY #206124
1501 K Street, N.W.
Washington, D.C. 20005
Telephone: (202) 736-8010
Facsimile: (202) 736-8711

Attorneys for the AT&T Defendants

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re: NATIONAL SECURITY AGENCY TELECOMMUNICATIONS RECORDS LITIGATION	MDL Dkt. No. 06-1791-VRW **STIPULATION AND [PROPOSED] ORDER REGARDING NEW CASES AGAINST AT&T DEFENDANTS**
This Document Relates To: ALL CASES	[Civil L.R. 6-2, 7-1(5), 7-12] Courtroom: 6, 17th Floor Judge: Hon. Vaughn R. Walker

Dockets.Justia.com

RECITALS

A. On November 7, 2006, in order to provide, *inter alia,* for "coordinated management of the transferred cases," Plaintiffs filed their Joint and Agreed Organization Plan ("Organization Plan"). Dkt. 58, at 1. The Organization Plan was intended to govern not only "all actions currently transferred in this MDL proceeding" but also "any and all tag-along cases that may be subsequently transferred to this Court or otherwise coordinated as part of this proceedings," which we shall refer to as a "New Case." *Id.* The Organization Plan, however, does not expressly provide for the treatment of such New Cases with regard to existing scheduling orders and stipulations.

B. On November 22, 2006, the Court issued Pretrial Order No. 1, which designated counsel pursuant to the Organization Plan. Dkt. 79.

C. Conditional Transfer Order (CTO-6) of the Judicial Panel on Multidistrict Litigation transferred *Jacobs v. AT&T Corp.,* S.D. Florida No. 0:07-60365-CIV-ZLOCH to this Court. Dkt. 247. CTO-6 became final on April 9, 2007. *Jacobs* names AT&T Corp.; "American Telephone and Telegraph Company"; BellSouth Telecommunications, Inc.; Cingular Wireless, LLC; Verizon Communications, Inc.; Verizon Florida, Inc.; and Does 1-20, as defendants. On agreed and unopposed motion, the U.S. District Court for the Southern District of Florida had previously ordered *Jacobs* stayed pending transfer to this MDL. Order of March 22, 2007, *Jacobs v. AT&T Corp.*, S.D. Florida No. 0:07-60365-CIV-ZLOCH, Dkt. 4.

D. Additional New Cases may subsequently be transferred to this Court or otherwise coordinated as part of this MDL proceeding.

E. The AT&T Defendants[1] are party to and the subject of various stipulations in this MDL, which would be unduly burdensome to renegotiate for each New Case.

---

[1] "AT&T Defendants" refers to all of the defendants that are corporate affiliates of AT&T Inc. (including Cingular (now AT&T Mobility) and BellSouth (now AT&T Southeast)), as defined in footnotes 3 and 5 of the previously filed Joint Case Management Statement, Dkt. 61, at 2. "AT&T Defendants" also includes any corporate affiliates of these defendants named in any New Case (as defined in recital A) added to this MDL after the date of this Stipulation.

F. Substantial administrative burden may result if each New Case is subject to conflicting stipulations and orders, and the parties seek to minimize such burdens on the Court and themselves.

STIPULATION

Plaintiffs and the AT&T Defendants hereby stipulate as follows:

1. Subject to any party's right to seek relief pursuant to paragraph 4 below, each New Case (as defined in recital A) against any or all of the AT&T Defendants will be subject to all relevant existing stipulations of the parties, as well as all existing case management, stay, and other similar procedural orders issued by this Court.

2. This stipulation does not affect any claims in any New Case against non-AT&T Defendants, nor any cases in which the United States is a plaintiff or a state governmental entity is a party.

3. The AT&T Defendants shall respond to the complaint in any New Case, including, but not limited to, *Jacobs*, in accordance with the terms and conditions of this Court's Orders of February 22, 2007, March 14, 2007, and March 20, 2007, together with such further related Orders as this Court may issue in the future. Dkts. 177, 199 and 209.

4. By entering into this Stipulation, no party waives any procedural or substantive defenses, rights or objections, except as previously stipulated by the parties.

5. Any party may challenge the application of this Stipulation to any New Case for good cause shown through administrative motion brought pursuant to Civil Local Rule 7-11.

DECLARATION PURSUANT TO GENERAL ORDER 45, § X.B

I, MARC H. AXELBAUM, hereby declare pursuant to General Order 45, § X.B, that I have obtained the concurrence in the filing of this document from the other signatory listed below.

I declare under penalty of perjury that the foregoing declaration is true and correct.

Executed on April 25, 2007, at San Francisco, California.

/s/ Marc H. Axelbaum
Marc H. Axelbaum

Dated: April 25, 2007.

PILLSBURY WINTHROP SHAW PITTMAN LLP
BRUCE A. ERICSON
DAVID L. ANDERSON
JACOB R. SORENSEN
MARC H. AXELBAUM
DANIEL J. RICHERT
50 Fremont Street
Post Office Box 7880
San Francisco, CA 94120-7880

SIDLEY AUSTIN LLP
DAVID W. CARPENTER
DAVID L. LAWSON
BRADFORD A. BERENSON
EDWARD R. McNICHOLAS
ERIC A. SHUMSKY
1501 K Street, N.W.
Washington, D.C. 20005

By *_/s/ Marc H. Axelbaum_*
Marc H. Axelbaum

Attorneys for the AT&T Defendants

ELECTRONIC FRONTIER FOUNDATION
CINDY COHN (145997)
LEE TIEN (148216)
KURT OPSAHL (191303)
KEVIN S. BANKSTON (217026)
CORYNNE MCSHERRY (221504)
JAMES S. TYRE (083117)
454 Shotwell Street
San Francisco, CA 94110
Telephone: (415) 436-9333
Fax: (415) 436-9993

By /s/ *Cindy Cohn per G.O. 45*
Cindy Cohn

Attorneys for AT&T Class Plaintiffs and Co-Chair of Plaintiffs' Executive Committee

[PROPOSED] ORDER

Pursuant to the foregoing Stipulation, and good cause appearing, the Court orders the following:

1. Each further "Tag-Along" and other case transferred to this Court or otherwise coordinated as part of this MDL proceeding (a "New Case") against any or all of the AT&T Defendants will be subject to all relevant existing case management, stay, and other similar procedural orders issued by this Court.

2. This stipulated Order does not affect any claims in any New Case against non-AT&T Defendants, nor any cases in which the United States is a plaintiff or a state governmental entity is a party.

3. The AT&T Defendants shall respond to the complaint in any New Case, including, but not limited to, *Jacobs v. AT&T Corp.*, S.D. Florida No. 0:07-60365, in accordance with the terms and conditions of this Court's Orders of February 22, 2007, March 14, 2007, and March 20, 2007, together with such further related Orders as this Court may issue in the future. Dkts. 177, 199 and 209.

4. By entering into this Stipulation, no party waives any procedural or substantive defenses, rights or objections, except as previously stipulated by the parties.

5. Any party may challenge the application of this Stipulation to any New Case for good cause shown through administrative motion brought pursuant to Civil Local Rule 7-11.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: April __, 2007.

____
Hon. Vaughn R. Walker
United States District Chief Judge